

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>JOSE LUIS GARZA</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 179,344
<b>TEETER IRRIGATION COMPANY</b>	)	
Respondent	)	
AND	)	
	)	
<b>CNA INSURANCE COMPANIES</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

This case is again before the Appeals Board pursuant to a remand from an unpublished Memorandum Opinion by the Court of Appeals filed January 30, 1998. The Petition for Review filed by the appellee, Michael V. Madden, on February 23, 1998, was denied by the Kansas Supreme Court on March 17, 1998.

This case involves an attorney fee dispute between attorneys Michael V. Madden and C. Albert Herdoiza. The original Appeals Board decision entered September 23, 1996, granted Mr. Madden \$1,000 in *quantum meruit*, expenses of \$150.91, plus an amount equal to 25 percent of the temporary total disability compensation received by claimant between March 18, 1994, and the time the temporary total disability benefits ceased. The Court of Appeals held that Mr. Madden's attorney fee lien did not attach to the temporary total disability benefits because his contract was not filed with the Division of Workers Compensation until after all temporary total disability benefits had been paid. The Court stated that:

Here, Madden's contract was not filed with the Division of Workers Compensation until July 21, 1995. All TTD benefits on which Madden based his lien claim occurred before that date, and the lien did not attach to those benefits because they were not "due or to become due" but had already been paid. Therefore, although Madden's contract may have entitled him to collect an attorney fee for the TTD benefits in this case, his lien rights enforceable against Herdoiza, under the *Barnett* logic, did not extend that far. As

interpreted by *Barnett*, K.S.A. 44-536(b) places the burden on attorneys in workers compensation cases to file their fee contracts promptly in order to assure a lien on amounts collected by the client.

Because Mr. Madden's lien was not enforceable, the Court of Appeals reversed the Board's assessment of attorney fees and remanded this matter "for a hearing to determine the quantum meruit value of Madden's services, along with his expenses, which is all that Madden would be entitled to receive from Herdoiza."

The Appeals Board is not a court of record and does not conduct hearings. The Board's jurisdiction is set forth in K.S.A. 44-555b(a). It provides that "[t]he review by the board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge."

Because the Court of Appeals directed that there be a hearing to determine the *quantum meruit* value of Madden's services and expenses, the Appeals Board must remand this matter to the Administrative Law Judge to conduct such a hearing.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the April 9, 1996, Order by Administrative Law Judge Jon L. Frobish and the September 23, 1996, Order entered by the Appeals Board should be, and are hereby, remanded to the Administrative Law Judge for a hearing and determination on the *quantum meruit* value of Mr. Madden's services and expenses.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: C. Albert Herdoiza, Kansas City, KS  
Michael V. Madden, Wichita, KS  
Steven L. Foulston, Wichita, KS  
D. Steven Marsh, Wichita, KS  
Jon L. Frobish, Administrative Law Judge

**JOSE LUIS GARZA**

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**DOCKET NO. 179,344**

Philip S. Harness, Director